

F I L E D
Clerk of the Superior Court
JUL 11 2008
By: C. WALKER, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff,

vs.

PRUDENTIAL OVERALL SUPPLY, a
California corporation, DOES 1-100,
inclusive,

Defendant.

CASE NO. 37-2007-00075766-CU-BT-
CTL

STIPULATED JUDGMENT

This action has come before the Court, upon the pleadings and proceedings of record, and it has been represented to the Court that The People of the State of California (hereinafter referred to as "Plaintiff") and Prudential Overall Supply (hereinafter referred to as "Defendant"), have entered into this Stipulated Judgment pursuant to Code of Civil Procedure § 664.6 to implement their settlement of this civil action and all claims, and defenses that were or could have been brought in this civil action.

WHEREFORE, with the consent of the parties, by and through their undersigned attorneys, it is hereby ORDERED, ADJUDGED and DECREED that:

1. This Court has jurisdiction over the parties and subject matter of this action.
2. This is an action by the People of the State of California brought under Cal.

1 Bus. & Profs. Code §17200, et. seq. for the recovery of unpaid wages, benefits, and for
2 civil penalties arising out of the alleged violations by Defendant Prudential Overall
3 Supply of the San Diego Living Wage Ordinance, S.D. Muni. Code § 72.4201, et. seq.
4 The People specifically allege that Defendant violated the Living Wage Ordinance, or
5 “LWO,” with respect to its performance of work for the City of San Diego under two
6 service contracts it entered into with the City, Contracts nos. 5683-03-Q and 7100-06-W.

7 3. By this Stipulated Judgment, Plaintiff and Defendant agree that payments in
8 the total sum of Forty Five Thousand Five Hundred Dollars (\$45,500) shall be distributed
9 to the twenty six (26) employees listed in Exhibit A hereto, based on the amounts of hours
10 said employees worked for Defendant between August 1, 2006 and June 30, 2007. The
11 parties represent and understand that the employees listed in Exhibit A were the
12 employees of the Defendant who performed worked on the City Contracts and would have
13 been entitled to receive the living wage and benefits provided by the LWO. Prudential
14 Overall Supply will pay each of the persons listed in Exhibit A the amount identified with
15 their respective name, less the amount required for withholdings and deductions and
16 contributions for all payroll taxes and state and federal income taxes required to be paid in
17 connection with the payment. Within sixty (60) days of the entry of this judgment,
18 Prudential Overall Supply shall provide the Office of the City Attorney of San Diego with
19 proof that the required payments have been made; and within ten (10) days after said
20 proof is furnished, the People shall file an Acknowledgement of Satisfaction of Judgment
21 with the court.

22 4. This Stipulated Judgment shall be binding upon all persons (identified on
23 Exhibit A) who worked on either of the Service Contracts in Defendant’s Chula Vista,
24 California Plant from July 1, 2006 to the present. Entry of the Stipulated Judgment shall
25 constitute a release by all such persons of all claims or causes of action that any of them
26 either have or may have against Defendant for unpaid wages and benefits arising out of
27 any violation of the San Diego Living Wage Ordinance by Defendant from July 1, 2006 to
28 the present. It is the intent of the parties that this Stipulated Judgment be conclusive with

1 respect to all claims which either were or could have been made by Defendant's
2 employees for violation of the Living Wage Ordinance arising out of the Defendant's
3 performance of the two Service Contracts referred to hereinabove, and that this Stipulated
4 Judgment shall have *res judicata* effect with respect to any future claims which may be
5 asserted therefore.

6 5. In addition to the foregoing, Prudential Overall Supply shall pay a total of
7 Twenty Thousand Dollars (\$20,000.00) to the Office of the city Attorney of San Diego,
8 representing penalties of Twenty Five Hundred Dollars (\$2,500.00) for each of the eight
9 (8) violations of California Business & Professions Code §17200, et. seq. which the
10 People have alleged that Defendant committed in this action; said payment to be made
11 within sixty (60) days of the entry of this Stipulated Judgment.

12 6. Neither this Stipulated Judgment nor any act performed or document
13 executed pursuant to or in furtherance of this Judgment, (a) is or may be deemed to be, or
14 may be used as an admission of, or evidence of, the validity of any Released Claim or any
15 other claim or of any wrongdoing by or liability of Defendant; or (b) is or may be deemed
16 to be, or may be used as an admission of, or evidence of, any fault, omission or illegal or
17 unfair business practice of the Defendant in any civil, criminal, or administrative
18 proceeding in any court, administrative agency or other tribunal; except that the
19 Defendant may file this Stipulated Judgment in any action that may be brought against it
20 in order to support a defense or cross-claim based on the principles of *res judicata*,
21 collateral estoppel, release, good faith settlement, judgment bar or reduction, accord and
22 satisfaction, or other theory of claim or issue preclusion, or similar defense.

23 7. Without limiting the generality of the foregoing, neither this Stipulated
24 Judgment nor any act performed or document executed pursuant to or in furtherance of the
25 same shall be deemed an admission by Defendant that it engaged in any violation of the
26 LWO. In addition, if this Stipulated Judgment fails to be approved or is otherwise not
27 consummated for any reason, Defendant retains the right to fully defend this action and to
28 assert all applicable affirmative defenses, including but not limited to the defenses based

1 on the alleged unconstitutionality of the LWO, that are set forth in its Amended Answer
2 filed in this action.

3 8. The exhibit to this Stipulation is a material and integral part hereof and is
4 fully incorporated herein by this reference.

5 9. This Stipulation may be amended or modified only by a written instrument
6 signed by counsel to all Settling Parties.

7 10. This Stipulation and the exhibits attached hereto constitute the entire
8 agreement among the Settling Parties, and no representations, warranties or inducements
9 have been made to any party concerning this Stipulation or its exhibits other than the
10 representations, warranties and covenants contained and memorialized in such documents.

11 11. Each counsel or other person executing this Stipulated Judgment or any of
12 its exhibits on behalf of any party hereto hereby warrants that such person has the full
13 authority to do so.

14 12. This Stipulation shall be binding upon, and inure to the benefit of, the
15 successors and assigns of the parties hereto.

16 13. This Stipulation and the exhibits hereto shall be considered to have been
17 negotiated, executed and delivered, and to be wholly performed, in the State of California,
18 and the rights and obligations of the parties to the Stipulation shall be construed and
19 enforced in accordance with, and governed by, the internal substantive laws of the State of
20 California without giving effect to that State's conflict of law principles.

21 14. The Parties hereto agree that the terms and conditions of this Stipulated
22 Judgment are the result of lengthy, intensive arms-length negotiations between the Parties
23 and that this Stipulation shall not be construed in favor of or against any Party by reason
24 of the extent to which any party or its counsel participated in the drafting of this
25 Stipulation.

26 15. This Judgment represents a final adjudication of all claims, cross-claims and
27 defenses that were or could have been brought by the Plaintiff and Defendant in this civil
28 action.

1 16. The Court retains jurisdiction over the subject matter and parties to enforce
2 the terms of this Judgment.

3 17. Except as otherwise provided herein, each party to this Judgment shall bear
4 its own costs and attorneys' fees.

5
6 STIPULATED TO AND APPROVED
7 AS TO FORM AND CONTENT:

8 By: D.F. Bamberg
9 Daniel Bamberg
10 Deputy City Attorney
11 City of San Diego
12 1200 Third Avenue, Suite 1100
13 San Diego, CA 92101
14 Telephone: (619) 236-6220
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16 Attorneys for Plaintiff PEOPLE OF
17 THE OF THE STATE OF
18 CALIFORNIA

By: Ronald W. Novotny
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Facsimile: (213) 624-4840
Attorneys for Defendant PRUDENTIAL
OVERALL SUPPLY

16
17 IT IS SO ORDERED. JUDGMENT IS HEREBY ENTERED PURSUANT
18 TO THIS STIPULATION AS OF THE DATE BELOW WRITTEN.

19 DATED: JUL 11 2008

20
21 JUDITH F. HAYES

22 JUDGE, SAN DIEGO SUPERIOR COURT
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PRUDENTIAL EMPLOYEES
SETTLEMENT TABLE
AUGUST 2006 THROUGH JUNE 2007

Employee	Total Hours	Percentage	Amount Owed
ALVAREZ, RAQUEL	1,791.00	4.0084%	\$1,823.82
BELTRAN, FRANCISCO	2,408.25	5.3899%	\$2,452.39
DE CRISTERNA, MARIA	1,484.00	3.3213%	\$1,511.20
DE RICO, MARIA	1,936.00	4.3329%	\$1,971.48
DIAZ, ANA	1,488.75	3.3319%	\$1,516.03
FELIX, DELFINO	1,900.53	4.2535%	\$1,935.36
GAMBINIO, CYNTHIA	1,924.72	4.3077%	\$1,960.00
GONZALEZ, ELVIRA	1,843.40	4.1257%	\$1,877.18
GONZALEZ-SANCHEZ, JORGE	2,396.52	5.3636%	\$2,440.44
GURROLA, MARIA	1,902.73	4.2585%	\$1,937.60
LOPEZ, ROSALBA	1,864.12	4.1721%	\$1,898.28
MANZO, MARTHA	1,768.00	3.9569%	\$1,800.40
MARTINEZ, JOSEFINA	1,878.25	4.2037%	\$1,912.67
MEADE, JUANA	1,870.50	4.1863%	\$1,904.78
MEZA, ANTHONY	379.37	0.8491%	\$386.32
MONJARAS, DAVID	1,820.38	4.0742%	\$1,853.74
MONJARAZ, LUIS	1,915.75	4.2876%	\$1,950.86
RAMIREZ, CATALINA	1,946.50	4.3564%	\$1,982.17
RAMIREZ, FRANCISCO	1,897.25	4.2462%	\$1,932.02
RODRIGUEZ, MARTHA	1,911.57	4.2783%	\$1,946.60
SALDANA, JUAN	181.20	0.4055%	\$184.52
SILLAS, MARCO	615.50	1.3775%	\$626.78
VASQUEZ, MARIA	1,917.50	4.2915%	\$1,952.64
VAZQUEZ, LUZ	1,906.12	4.2661%	\$1,941.05
WYSONG, ISABLE	1,873.20	4.1924%	\$1,907.53
ZAZUETA DE R, MARIA	1,860.00	4.1628%	\$1,894.09
TOTALS:	44,681.11	100.0000%	\$45,500.00

West's Ann.Cal.Bus. & Prof.Code § 17206

West's Annotated California Codes Currentness

Business and Professions Code (Refs & Annos)

Division 7. General Business Regulations (Refs & Annos)

▣Part 2. Preservation and Regulation of Competition (Refs & Annos)

▣Chapter 5. Enforcement (Refs & Annos)

➡§ 17206. Civil Penalty for Violation of Chapter [FN1]

(a) Any person who engages, has engaged, or proposes to engage in unfair competition shall be liable for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General, by any district attorney, by any county counsel authorized by agreement with the district attorney in actions involving violation of a county ordinance, by any city attorney of a city having a population in excess of 750,000, by any city attorney of any city and county, or, with the consent of the district attorney, by a city prosecutor in any city having a full-time city prosecutor, in any court of competent jurisdiction.

(b) The court shall impose a civil penalty for each violation of this chapter. In assessing the amount of the civil penalty, the court shall consider any one or more of the relevant circumstances presented by any of the parties to the case, including, but not limited to, the following: the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth.

(c) If the action is brought by the Attorney General, one-half of the penalty collected shall be paid to the treasurer of the county in which the judgment was entered, and one-half to the General Fund. If the action is brought by a district attorney or county counsel, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. Except as provided in subdivision (e), if the action is brought by a city attorney or city prosecutor, one-half of the penalty collected shall be paid to the treasurer of the city in which the judgment was entered, and one-half to the treasurer of the county in which the judgment was entered. The aforementioned funds shall be for the exclusive use by the Attorney General, the district attorney, the county counsel, and the city attorney for the enforcement of consumer protection laws.

West's Ann.Cal.Bus. & Prof.Code § 17206

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Attorneys for Plaintiff
PEOPLE OF THE STATE OF CALIFORNIA

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

PEOPLE OF THE STATE OF CALIFORNIA,)	Case No.
)	
Plaintiff,)	COMPLAINT FOR VIOLATION
)	OF CALIFORNIA BUSINESS &
v.)	PROFESSIONS CODE § 17200
)	ET SEQ.
PRUDENTIAL OVERALL SUPPLY, a)	
California corporation; DOES 1-100, inclusive.)	
)	EXEMPT FROM FILING FEES
Defendants.)	PURSUANT TO GOVERNMENT
)	CODE SECTION 6103
)	
)	[GENERAL CIVIL CASE -
)	DAMAGES EXCEED \$25,000]
)	
)	
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THE PEOPLE OF THE STATE OF CALIFORNIA allege as follows:

INTRODUCTION

1. This is a civil action brought by the People of the State of California pursuant to Business and Professions Code §§17200, *et seq.*, the City of San Diego's Living Wage Ordinance (San Diego Municipal Code §§ 22.4201 *et seq.*) and California Labor Code §§ 200 *et seq.*
2. This action alleges that Defendant paid its employees who perform work pursuant to uniform and linen services contracts between the City of San Diego and Defendant less than the amount that Defendant was required to pay under the City of San Diego's Living Wage

1 Ordinance. Accordingly, this action alleges that Defendant has violated the Living Wage
2 Ordinance; has violated Labor Code §§ 200 *et seq.*, by failing to pay employees their full wages
3 when due; and has thereby engaged in unfair and unlawful business practices in violation of
4 Business & Professions Code §§ 17200 *et seq.*

5 3. Through this civil action, the People of the State of California seek compensation
6 for all uncompensated work, restitution and/or disgorgement of all benefits obtained by
7 Defendant from its unlawful business practices, civil penalties as permitted by law, and
8 reasonable attorney's fees and costs.

9 **PARTIES**

10 4. The People of the State of California (hereafter "PEOPLE") bring this action
11 through Michael J. Aguirre, acting in his official capacity as City Attorney of the City of San
12 Diego, a California charter city having a population in excess of 750,000.

13 5. PEOPLE are informed and believe and thereon allege that defendant
14 Prudential Overall Supply is a California corporation that is authorized to transact business, and
15 does transact business, within the State of California.

16 6. The true names and capacities, whether individual, corporate, associate, or
17 otherwise, of defendants DOES 1 through 100, inclusive, are unknown to PEOPLE which
18 therefore sues said defendants by such fictitious names. PEOPLE will ask leave of court to
19 amend its Complaint to show the true names and capacities of such fictitiously named defendants
20 when the same have been ascertained. PEOPLE is informed and believes, and thereon alleges,
21 that each of the defendants designated DOES 1 through 20, inclusive, is responsible under the
22 law in some manner, through some wrongful conduct or otherwise, for the events and
23 happenings referred to herein, and thereby proximately caused damages to PEOPLE as alleged
24 herein.

25 7. PEOPLE are informed and believes and thereon alleges that at all times
26 mentioned, the defendants, named and unnamed, and each of them, were the principals, agents,
27 servants, employers, employees and/or partners of each of their remaining co-defendants, and in
28

1 doing the things herein described were acting in the course and scope of such relationships and
2 with the permission and consent of each of the other defendants.

3 VENUE

4 8. Venue of this action is proper in the County of San Diego because one or
5 more of the relevant contracts were entered into and were performed in violation of the City of
6 San Diego's Living Wage Ordinance, Business & Professions Code §§ 17200 *et seq.*, and
7 California Labor Code §§ 200 *et seq.* in the City and County of San Diego.

8 GENERAL ALLEGATIONS

9 9. On or about June 6, 2005, the City of San Diego enacted Ordinance O-19386
10 N.S., now commonly known as the San Diego Living Wage Ordinance ("Living Wage
11 Ordinance", attached as Exhibit 1). The Living Wage Ordinance requires covered employers
12 and their subcontractors to pay employees a wage that will enable a full time worker to meet
13 basic needs and avoid economic hardship. The Living Wage Ordinance sets out a schedule of
14 minimum hourly wages that must be paid to covered employees.

15 10. The Living Wage Ordinance became effective regarding covered service contracts
16 with the City of San Diego, including any applicable subcontract, entered into, awarded,
17 amended, renewed, or extended on or after July 1, 2006.

18 11. On or about November 6, 2002, the City of San Diego requested a bid from
19 Defendant pursuant to Bid No. 5683-03-Q-Uniform Service and Linen Supply. The bid pertained
20 to furnishing uniform service and linen supply pursuant to a one-year contract with options to
21 renew. Defendant Prudential Overall Supply won the bid and services contract. (See "Prudential
22 Contract 5683-03-Q", attached as Exhibit 2.)

23 12. The Prudential Contract 5683-03-Q was amended, renewed, and/or extended on
24 or after July 1, 2006, and therefore, was subject to the terms and conditions of the Living Wage
25 Ordinance.

26 13. On or about January 12, 2006, the City of San Diego requested a bid from
27 Defendant pursuant to Bid No. 7100-06-W-Uniform Service for Street Division. The bid
28 pertained to furnishing uniform service for Streets Division pursuant to a one-year contract with

options to renew. Defendant Prudential Overall Supply won the bid and services contract. (See "Prudential Contract 7100-06-W", attached as Exhibit 3.)

14. The Prudential Contract 7100-06-W was amended, renewed, and/or extended on or after July 1, 2006, and therefore, was subject to the terms and conditions of the Living Wage Ordinance.

15. For the period between July 1, 2006 and up to the time of termination of Prudential Contract 5683-03-Q and Prudential Contract 7100-06-W, Defendant consistently paid its workers at wage rates that were below the required wage rates as set forth in the Living Wage Ordinance and its respective mandatory-minimum wage rate schedules.

16. By failing to compensate its covered employees as required by the Living Wage Ordinance, as set forth above, Defendant has violated California Labor Code § 204, which requires employers to pay their employees their full wages when due.

FIRST CAUSE OF ACTION

(Violation of Business and Professions Code § 17200)

17. Plaintiff realleges as if fully set forth each allegation contained in paragraphs 1 through 16 above, and further alleges as follows:

18. Beginning at an exact date unknown to Plaintiff, but at all times relevant herein and described above, Defendant has committed acts of unfair competition, proscribed by Business and Professions Code § 17200 *et seq.*, including the practices referred to above.

19. The unlawful, unfair and fraudulent business practices of Defendant described herein present a loss to the covered employees in that Defendant engaged in these practices.

20. Plaintiff is informed and believes, and based upon such information and belief, alleges that by engaging in the unfair and unlawful business practices complained of above, Defendant was able to lower its labor costs and thereby obtain a competitive advantage over law-abiding employers with whom it competes.

21. Defendant's wrongful conduct should be redressed by equitable relief, including an order requiring Defendant to make restitution to all covered employees harmed by Defendant's unlawful conduct as herein alleged.

1 WHEREFORE, Plaintiff prays for judgment as follows:

2 **PRAYER FOR RELIEF**

3 1. For restitution to the covered employees of amounts Defendant has wrongfully
4 obtained as a result of its unlawful, unfair and fraudulent business practices;

5 2. For civil penalties pursuant to Business & Professions Code § 17206;

6 3. For attorney's fees pursuant to Code of Civil Procedure § 1021.5 and
7 Labor Code § 218.5;

8 4. For costs of suit; and

9 5. For such other relief as the Court deems proper.

10 Dated: September 25, 2007

MICHAEL J. AGUIRRE, City Attorney

11
12 By _____

DANIEL F. BAMBERG
Deputy City Attorney

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14 Attorneys for Plaintiff
15 People of the State of California
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